RESERVED

IN THE HIGH COURT OF UTTARNACHAL AT NAINITAL

WRIT PETITION NO.393 OF 2001 (S/B)
(Old No.29675 of 2000)

Dr. Ashok Kumar Pandey S/o Late Sri Rajendra Pandey,
Lecturer (Law) Constituent College, Distt. Tehri Garhwal

..... **Petitioner**

Versus

1. The Chancellor, Hemwati Nand Bahuguna Garhwal University, Raj Bhawan, Lucknow
2. The Vice Chancellor/Chairman, Executive Council, Hemwati Nandan Bahuguna University, Srinagar, Garhwal
3. Dr. Subhash Chandra Gupta, Lecturer (Law), Constituent College, Pauri Garhwal
4. The Seniority Committee, through its Chairman/ Vice Chancellor, Hemwati Nandan Bahuguna Unirersity, Garhwal

..... Respondents

Shri Dharamveer Sharma, Senior Advocate for the petitioner.
Sri J.P. Joshi, Advocate for Respondent Nos.1 and 2.
Sri V.K. Bisht, Senior Advocate for the Respondents No.3.

Dated: March 28, 2006

Coram: Hon'ble Rajeev Gupta, C.J.
Hon. P.C. Verma, J.

Per Hon'ble P.C. Verma, J.

By means of this writ petition, the petitioner has prayed for writ of certiorari quashing the impugned order dated 13.06.2000 passed by Respondent No.1 (Annexure No.XIV), the decision dated 31.07.1998 taken by Executive Council which was communicated to the petitioner vide letter dated 14.07.1999 (Annexure No.XII) and the decision of Seniority Committee dated 04.04.1995 communicated vide letter dated 8/9.01.1998 (Annexure No. VIII).

2. Brief facts of the case as narrated by the petitioner are that an advertisement was published in daily News Paper Times of India for appointment of Lecturers, Readers and Professors in the University being Advertisement No.3 of 1987. In the said advertisement, two posts of Lecturers in Law were advertised out of which one post was to be filled up against the leave vacancy. The petitioner also applied against the said advertisement for appointment to the post of Lecturer and in the interview, eight candidates were appeared for the said post. The Selection Committee in its meeting dated 23.03.1988 under the Chairmanship of Vice Chancellor of the University placed the petitioner at Serial No.1 in order of merit and Sri S.C. Gupta (Respondent No.3) at Serial No.2. Thereafter, the recommendation of Selection Committee was approved by the Executive Council in its meeting dated 20.06.1988 and accordingly the appointment letters were issued under the signature of Vice Chancellor dated 20.06.1988 itself to both the recruited persons. The appointment of the petitioner was made against the regular vacancy whereas the appointment of Respondent No.3 was made against the leave vacancy. Later on in the meeting of Executive Council dated 22.04.1992 in exercising of powers under Section 31 (3)(b) of the State Universities Act, the appointment of Respondent No.3 was also made against the regular vacancy. In the seniority list prepared on 30.04.1994 circulated under the signature of Registrar dated 31.05.1994, the petitioner was placed at Serial No.172, whereas the Respondent No.3 was shown at Serial No.173. On 17.10.1993, under Section 7.06 of the First Statutes of University, Law Faculty Board was constituted which was circulated by the Registrar of the University dated 06.12.1993, in which the petitioner's

name was included as a number of the Board being senior to Respondent No.3. Thereafter, the petitioner received a letter dated 08/09.01.1998 issued by vice Chancellor/ Chairman of the University (Respondent No.2) by which it was informed that in the meeting of Seniority Committee held on 04.04.1995, the Respondent No.3 Dr. Subhash Chandra Gupta has been declared senior to the petitioner. Being aggrieved against the said decision of Respondent No.2, the petitioner preferred an appeal on 28.02.1998 before the Executive Council under Section 18.09 (3) of the First Statutes of the University. The petitioner thereafter sent several reminders dated 25.09.1998, 27.10.1998, 24.12.1998 and lastly on 15.12.1999 to the Executive Council. The petitioner received a letter dated 14.07.1999 issued by the Registrar of the University by which it was informed to him that the Executive Council vide its resolution dated 31.07.1998 resolved that the matter be sent to the Counsellor. As soon as the petitioner received the said decision of the Executive Council, he filed a representation-dated 05.10.1999 under Section 68 of the State University Act before Chancellor of the University (Respondent No.1). The petitioner in his representation alleged that no opportunity was given to him by the Seniority Committee before taking decision even though for the last nine years and six months although he had been senior to Respondent No.3. It was also alleged that the Seniority Committee that took decision was included the Dean of law faculty whereas under pare 18.09(1) of the First Statutes of the University in the Seniority Committee, the Dean of the said faculty could not be a member. The Chancellor of the University (Respondent No.1) vide his order dated 13.06.2000 rejected the

representation of the petitioner. Feeling aggrieved, the petitioner has come up in the writ petition.

3. A counter affidavit has been filed on behalf of Respondent No.3 in which it has been alleged that from the minutes of the proceedings of the Selection Committee, two separate panels for two posts were prepared. The petitioner was placed at Serial No.1 in the first panel and the Respondent No.3 was placed at Serial No.1 in second panel. It has been in the affidavit that both the posts were permanent and regular and the petitioner was appointed on temporary basis whereas as the Respondent No.3 was appointed against leave vacancy. The Executive Council in its meeting dated 22.04.1992 granted benefit of Section 31(3)(b) of the U.P. State University Act, 1973 by changing the nature of appointment from leave to permanent and regular. It has also been stated that the Selection Committee prepared two separate panels for both posts and the name of Respondent No.3 was in both panels (No.2 in first panel and No.1 in second panel). Petitioner joined the first penal and the Respondent No.3 joined the post of second panel and they both i.e. Petitioner and Respondent No.3 were at Serial No.1 in separate panel and joined on the same date i.e. 20.06.1988, therefore the question of seniority of petitioner at that time did not arise. It has further been stated that Dean Faculty of Law of the University was a member of Seniority Committee and he was nominated by the Chancellor of the University. It has further been stated that even if the decision of Dean Faculty of Law is ignored, the decision of Seniority Committee would not change as other two members unanimously decided the case in favour of the Respondent No.3 It has further been alleged that when the proposed seniority list upto 30.04.1994 for the first

time was circulated and the objections were invited from the lecturers upto 14.08.1994, the Respondent No.3 filed his objection against the petitioner's name as the same was put at Serial No.172. The Seniority Committee constituted by the Chancellor decided the matter in the meeting held on 04.04.1995 and the Respondent No.3 was declared senior to the petitioner.

4. In reply to the counter affidavit filed by Respondent No.3, the petitioner filed his Rejoinder Affidavit in which it was stated that from a perusal of Annexure No.2, it is clear that the panel was prepared according to merit and Respondent No.3 was placed at Sl. No.1 and Respondent No.3 was placed at Sl No.2 in First Panel. It has also been stated that the seniority was calculated by proviso of 18.5(kha) of the First Statutes of University and not by 18.05(f) and 18.07 of the First Statutes of the University because the 18.07 of the First Statutes of the University will not applicable when the order of merit has been given by the Selection Committee and approved by the Executive Council. It has also been alleged that since the Respondent No.3 was appointed against leave vacancy, therefore the benefit of 18.05(f) and 18.07 of the Statutes of the University cannot be given to Respondent No.3 when the appointee of Respondent No.3 was against regular vacancy. It has further been alleged by the petitioner that the Respondent No.3 was not qualified at the date of his substantial and regular appointment because the minimum qualification for the post of Lecturer in Law was Post graduation with 55% marks whereas the Respondent was having only 54.1% marks, therefore, the substantial and regular appointment of Respondent No.3 is against the law. Besides this in all the paragraphs of

the Rejoinder Affidavit, the grounds taken by the respondent No.3 have been denied by the petitioner.

5. We have heard learned counsel for the parties and perused the entire evidence on record.

6. The petitioner as well as Respondent No.3 were appointed on 20.06.1988 i.e. on the same day on the recommendation of the Selection Committee duly constituted State Universities Act, 1973 and the statute framed there under. The selection for the appointment was held by the Selection Committee on 23.03.1988 and 18 candidates were called for interview out of which -8- candidates attended the interview. The number of vacancies were two, one was permanent vacancy and another was a leave vacancy. The penal of names of the candidates found suitable for appointment was prepared, which is quoted as under:-

First	Second
1. Sri Ashok Kumar Pandey No.6	1. Sri S.C. Gupta No.4
2. Sri S.C. Gupta No.4	2. Sri Vijay Kumar No.16
3. Sri Vijai Kumar No.16	No other candidate

7. From the perusal of the above list, it is clear that from the same selected list, the names were recommended for appointment from the first list against the permanent vacancy and the second list against the leave vacancy. It appears that the seniority dispute was raised by Respondent No.3 after his regularization under Section 31(3)(b) of the State Universities Act and his services were regularized on 31.08.1990. The Respondent No.3 was placed senior to the petitioner in view of Clause 18.05(f) of First Statues of University of Hemwati Nandan Bahuguna, Garhwal, which reads as under:-

> **18.05(f) Continuous service in a temporary post to which a teacher is appointed after reference**

to a Selection Committee, if followed by his appointment in a substantive capacity to that post under Section 31(3)(b) shall count towards seniority.

8. Feeling aggrieved by this, the petitioner made a representation dated 05.10.1999 under Section 68 of the State Universities Act before the Chancellor of the University. The Chancellor vide his order dated 13.06.2000 rejected the said representation of the petitioner on the ground that benefit of past service rendered by Respondent No.3 was rightly counted in view of provisions of Clause 18.05(f) of the State Universities Act of the Statute and the Respondent No.3 was rightly held senior to the petitioner.

9. Since the Respondent No.3 was in a separate panel for appointment against the leave vacancy, therefore, there is no justification to determine the seniority on the basis of merit list prepared by the Selection Committee i.e. the first wherein the Respondent No.3 was placed at Sl. No.2 and hence the Chancellor has wrongly rejected the representation of the petitioner.

10. Now, we may proceed with the provision of the statement for resolving the dispute of seniority between the petitioner and Respondent No.3 Chapter XVIII Part-I of the Statute of the University deals with the seniority of the teachers of the University. Clause 18.01 of the Statute of the University provides that Statutes contained in this Chapter shall not affect the *inter se* seniority of teachers employed in the University from before the commencement of these Statues. Clause 18.02 of the Statute provides that it shall be the duty of the Registrar to prepare and maintain, in respect of each category of teacher of the University, a complete and up to date seniority list in accordance with the provisions

hereinafter appearing. Clause 18.05 provides for determining the seniority of teachers of the University, which reads as under: -

(a) A professor shall be deemed senior to every Reader, and a Reader shall be deemed senior to every Lecturer.

(b) In the same cadre, seniority of a teacher shall be determined according to the length of his continuous service in a substantive capacity of such cadre:

Provided that where more than one appointments to posts in a cadre have been made at the same time, and an order of preference or merit was indicated by the Selection Committee or by the Executive Council as the case may be, the seniority of the persons so appointed shall be governed by the order so indicated.

(c) When any teacher holding substantive post in any University (other than the University of Garhwal) or in any constituent college or in any Institute whether in the State of Uttar Pradesh or outside Uttar Pradesh, is appointed whether before or after August 1, 1981 to a post of corresponding rank or grade in the University, the period of service rendered by such teacher in that grade or rank in such University shall be added to his length of service.

(d) When any teacher holding substantive post in any college affiliated to or associated with any University is appointed [whether before or after the commencement of these Statutes] as a Lecturer in the University, then one-half of the period of substantive service rendered by such teacher in such college shall be added to his length of service.

(e) Service against an administrative appointment in any University or institution shall not count for the purposes of seniority.

Explanation- **In this Chapter, the expression "administrative appointment" means an appointment made under sub-section (6) of Section 13.**

(f) Continuous service in a temporary post to which a teacher is appointed after reference to a Selection Committee, if followed by his appointment in a substantive capacity to that post under Section 31(3)(b) shall count towards seniority.

11. Clause (b) of 18.05 of the Statute of the University is relevant for the purpose of resolving the controversy. In the present case it provides that the seniority of a teacher shall be determined according to the length of his continuous service in a substantive capacity of such cadre. If further provides that where more than one appointments to posts in a cadre have been made at the same time, **and order of preference or merit was indicated by the Selection Committee or by the Executive Council as the case may be, the seniority of the persons so appointed shall be governed by the order so indicated.**

12. In the case in hand, admittedly the Respondent No.3 was appointed against the leave vacancy and was regularized on 31.08.1990 and the benefit of service rendered on temporary post was given to him and that service was counted for determining his seniority then necessary result comes that both were appointed on the same day. Sri Ashok Kumar Pandey- petitioner was appointed on the substantive vacancy and Sri S.C. Gupta- Respondent No.3 was appointed against the leave vacancy. Earliest, we what have quoted itself indicates that for the merit list prepared for the substantive appointment by the Selection Committee as first list, Sri S.C. Gupta figures at Sl. No.2 and Sri Ashok Kumar Pandey figures at Sl. No. 1 In the second list, Sri S.C. Gupta was placed at Sl. No.1. and third candidate of First list was put at Sl. No.2. therefore, it was one merit list which was bifurcated by the Selection Committee for recommending the appointment considering the nature of the vacancies and according to that merit list, Sri S.C. Gupta was placed at Sl. No.2 and in view of provisions contained in proviso appended to Clause 18.05(b) of the Statute, Sri S.C. Gupta- Respondent No.3 was placed at

Sl. No.2 in the seniority list below Sri Pandey- the petitioner who was placed at Sl. No.1 in the merit list.

13. Therefore, the order of the Chancellor dated 13.06.2000 rejecting the representation of the petitioner suffers from manifest error of law being contrary to the proviso appended to Clause 18.05(b) of the Statute of the Hemwati Nandan Bahuguna Garhwal University in view of the facts stated hereinabove. Thus, the order of the Chancellor impugned in the petitioner is liable to be quashed and is accordingly dismissed. Sri Ashok Kumar Pandey- petitioner is declared senior to Sri S.C. Gupta- Respondent No.3.

14. The petitioner is allowed accordingly. No order as to costs.

(P.C. Verma, J.) **(Rajeev Gupta, C.J.)**

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